

which a municipality may file for bankruptcy and become a debtor under Chapter 9 in federal bankruptcy court.

16. However, in order to protect state sovereignty and in recognition of federalism principles under the 10<sup>th</sup> Amendment to the U.S. Constitution, Chapter 9 of the Bankruptcy Code prohibits municipalities from filing for bankruptcy unless the municipality "is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." Absent such authorization, federal bankruptcy courts have no jurisdiction under Chapter 9 over a municipality as a debtor. 11 USC §109(c)(2). See *Ashton v Cameron County Water Improvement Dist No 1*, 298 US 513; 56 S Ct 892; 80 L Ed 1309 (1936); and *United States v Bekins*, 304 US 27, 58 S Ct 811; 82 L Ed 1137 (1938).

17. Section 18 of PA 436, MCL 141.1558, specifically authorizes a local unit of government to become a debtor in a Chapter 9 bankruptcy proceeding if the emergency manager for the local government recommends to the Governor and the State Treasurer that the local government be authorized to proceed under Chapter 9, and if the Governor approves the recommendation by informing the emergency manager and State Treasurer in writing of his decision.

18. PA 436 nowhere requires that in considering whether to approve an emergency manager's recommendation to proceed under Chapter 9, the Governor shall not approve such recommendation if accrued pension benefits may be diminished or impaired in violation of Article IX Section 24 of the Michigan Constitution.

19. Accordingly, because PA 436 does not prohibit a municipality from proceeding under Chapter 9 of the U.S. Bankruptcy Code if accrued pension benefits may be unconstitutionally diminished or impaired, PA 436 is unconstitutional on its face in violation of Article IX Section 24 of the Michigan Constitution.

20. Section 11 of PA 436, MCL 141.1551, provides that "an emergency manager shall develop and may amend a written financial operating plan for the local government [and that] [t]he financial and operating plan shall provide for . . . [t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates."

21. On May 12, 2013, Emergency Manager Orr issued a financial and operating plan pursuant to Section 11 of PA 436. (Available at [www.freep.com/assets/freep/pdf/C4205233512.pdf](http://www.freep.com/assets/freep/pdf/C4205233512.pdf).) The plan does not schedule the "timely deposit of required payments" to the pension funds as required by Section 11 of PA 436, but instead notes that payments have been deferred to manage a liquidity crisis.

22. On June 14, 2013, Emergency Manager Orr issued a "Proposal for Creditors" in which he presents various restructuring options. (Available at <http://www.freep.com/assets/freep/pdf/C4206913614.pdf>.) Nowhere in this document does Emergency Manager Orr indicate any intent to comply with Article IX Sec 24 of the Michigan Constitution. Instead, in direct contravention of the Michigan Constitution, the proposal expressly states that "*there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.*"

23. Emergency Manager Orr has publicly threatened, in a June 14 interview with the Detroit Free Press Editorial Board, that vested pension benefits will be abrogated in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state law protecting vested pension benefits is "not going to protect" retirees or employees with vested pension benefits in bankruptcy court. (See [www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis](http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis).)

24. Article IX Section 24 of the Michigan Constitution is such a state law, which Emergency Manager Orr has asserted will "not . . . protect" vested pension benefits.

25. Under PA 436, the only way Emergency Manager Orr could impose his desired "significant cuts in accrued, vested pension amounts for both active and currently retired persons" is through a Chapter 9 bankruptcy filing.

26. Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional under Article IX Section 24 of the Michigan Constitution because PA 436 does not prohibit the Governor from authorizing a Chapter 9 bankruptcy filing which threatens to unconstitutionally diminish or impair the Plaintiffs' accrued pension benefits, and a final judgment ordering that Defendant Snyder and/or Defendant Dillon not authorize a Chapter 9 filing which threatens to diminish or impair accrued pension benefits in violation of the Michigan Constitution.

27. This case presents an actual controversy entitling Plaintiffs to a declaratory judgment because the facts stated above indicate "an adverse interest necessitating the sharpening of the issues raised." *Lansing School Education Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n20; 792 NW2d 686 (2010), quoting *Associated Builders and Contractors v Dep't of Consumer and Indus Servs Dir*, 472 Mich 117, 126; 693 NW2d 374 (2005). Plaintiffs are entitled to a declaratory judgment here "to obtain adjudication of rights before an actual injury occurs [and] to settle a matter before it ripens into a violation of the law . . ." *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006).

28. Plaintiffs need for a Declaratory Judgment is urgent. Based on the above facts, a request by the Emergency Manager to proceed under Chapter 9 is imminent, because he has credibly threatened – indeed, has given every indication – that he intends to impair or diminish accrued pension benefits in contravention of Article IX Section 24 of the Michigan Constitution, and that Chapter 9 bankruptcy proceedings are the mechanism by which he can do so. Thus Plaintiffs' rights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can

only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9. Moreover, Emergency Manager Orr's threats that he will unconstitutionally diminish or impair Plaintiffs' vested pension rights have themselves harmed Plaintiffs by instilling in Plaintiffs a reasonable fear that their constitutional rights will be trampled upon and, in the process, their future source of income drastically eroded.

29. Accordingly, Plaintiffs are entitled to a speedy hearing under MCR 2.605(D) on their request for declaratory relief.

### COUNT II: PRELIMINARY INJUNCTION

30. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 29 above.

31. Plaintiffs will suffer irreparable harm if Defendants Snyder and Dillon are not enjoined from authorizing the Emergency Manager to proceed under Chapter 9 of the U.S. Bankruptcy Code and thereby seeking to abrogate Plaintiffs' rights under the Michigan Constitution and the source of livelihood it guarantees them in a forum which the Emergency Manager contends does not protect those rights.

32. The harm to Plaintiffs absent injunctive relief outweighs the harm to Defendants if an injunction is granted because the Governor and Treasurer will not be harmed if they are enjoined from authorizing the Emergency Manager to file under Chapter 9.

33. Plaintiffs are likely to succeed on the merits.

34. There will be harm to the public interest absent an injunction, as the accrued vested pension rights of thousands of City of Detroit retirees and employees will be threatened with abrogation in violation of the Michigan Constitution.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the following relief:

- A. A declaratory judgment that PA 436 is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution.
- B. A preliminary and/or permanent injunction enjoining Defendant Snyder and Defendant Dillon from authorizing the Detroit Emergency Manager to commence proceedings under Chapter 9 of the U.S. Bankruptcy Code.
- C. An award to Plaintiffs of their costs and expenses, including attorneys' fees, incurred in this action.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: \_\_\_\_\_

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

Date: July 3, 2013

VERIFICATION

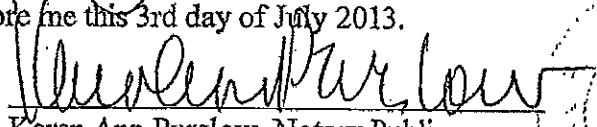
STATE OF MICHIGAN     )  
  )ss  
COUNTY OF OAKLAND    )

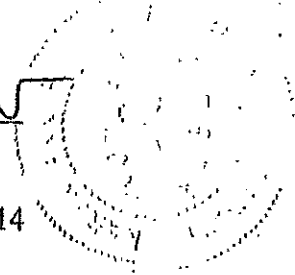
John R. Canzano, being first duly sworn, deposes and states he is the attorney representing Plaintiffs herein; that he has read the foregoing verified complaint by him subscribed for and on

behalf of Plaintiffs; that he knows the contents thereof to be true except as to those matters stated upon information and belief, and as to those matters, he believes them to be true, and he is authorized to sign said Verified Complaint on behalf of Plaintiffs.

  
John R. Canzano

Subscribed and sworn to before me this 3rd day of July 2013.

  
Karen Ann Purslow, Notary Public  
County of Oakland, State of Michigan  
My Commission Expires: April 19, 2014



## EXHIBIT 3



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

VIA HAND AND ELECTRONIC DELIVERY

July 18, 2013

Kevyn D. Orr  
Emergency Manager  
City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave., Suite 1126  
Detroit, MI 48226

Andrew Dillon  
State Treasurer  
Michigan Department of Treasury  
4th Floor Treasury Building  
430 W. Allegan Street  
Lansing, MI 48992

Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding

Dear Mr. Orr and Mr. Dillon,

I have reviewed Mr. Orr's letter of July 16, 2013, requesting my approval of his recommendation to commence a bankruptcy proceeding for the City of Detroit under Chapter 9 of title 11 of the United States Code. As you know, state law requires that any such recommendation must first be approved by the Governor before the emergency manager may take that step. MCL 141.1558. For the reasons discussed below, I hereby approve that recommendation and authorize Mr. Orr to make such a filing.

**Current Financial Emergency**

In reviewing Mr. Orr's letter, his Financial and Operating Plan, and his report to creditors, it is clear that the financial emergency in Detroit cannot be successfully addressed outside of such a filing, and it is the only reasonable alternative that is available. In other words, the City's financial emergency cannot be satisfactorily rectified in a reasonable period of time absent this filing.

I have reached the conclusion that this step is necessary after a thorough review of all the available alternatives, and I authorize this necessary step as a last resort to return this great City to financial and civic health for its residents and taxpayers. This decision comes in the wake of 60 years of decline for the City, a period in which reality was often



July 18, 2013

ignored. I know many will see this as a low point in the City's history. If so, I think it will also be the foundation of the City's future – a statement I cannot make in confidence absent giving the City a chance for a fresh start, without burdens of debt it cannot hope to fully pay. Without this decision, the City's condition would only worsen. With this decision, we begin to provide a foundation to rebuild and grow Detroit.

Both before and after the appointment of an emergency manager, many talented individuals have put enormous energy into attempting to avoid this outcome. I knew from the outset that it would be difficult to reverse 60 years of decline in which promises were made that did not reflect the reality of the ability to deliver on those promises. I very much hoped those efforts would succeed without resorting to bankruptcy. Unfortunately, they have not. We must face the fact that the City cannot and is not paying its debts as they become due, and is insolvent.

After reading Mr. Orr's letter, the Financial and Operating Plan, and the report to creditors, I have come to four conclusions.

1. Right now, the City cannot meet its basic obligations to its citizens.
2. Right now, the City cannot meet its basic obligations to its creditors.
3. The failure of the City to meet its obligations to its citizens is the primary cause of its inability to meet its obligations to its creditors.
4. The only feasible path to ensuring the City will be able to meet obligations in the future is to have a successful restructuring via the bankruptcy process that recognizes the fundamental importance of ensuring the City can meet its basic obligations to its citizens.

I will explain how I came to each conclusion.

**Inability to Meet Obligations to Its Citizens.** As Mr. Orr's Financial and Operating Plan and the June 14 Creditor Proposal have noted, the scale and depth of Detroit's problems are unique. The City's unemployment rate has nearly tripled since 2000 and is more than double the national average. Detroit's homicide rate is at the highest level in nearly 40 years, and it has been named as one of the most dangerous cities in America for more than 20 years. Its citizens wait an average of 58 minutes for the police to respond to their calls, compared to a national average of 11 minutes. Only 8.7% of cases are solved, compared to a statewide average of 30.5%. The City's police cars, fire trucks, and ambulances are so old that breakdowns make it impossible to keep up the fleet or properly carry out their roles. For instance, only a third of the City's ambulances were in service in the first quarter of 2013. Similarly, approximately 40% of the City's street lights were not functioning in that quarter and the backlog of complaints is more than 3,300 long. Having large swaths of largely abandoned structures -- approximately 78,000 -- creates additional public safety problems and reduces the quality of life in the City. Mr. Orr is correct that meeting the obligations the City has to

its citizens to provide basic services requires more revenue devoted to services, not less.

**Inability to Meet Obligations to Its Creditors.** The City has more than \$18 billion in accrued obligations. A vital point in Mr. Orr's letter is that Detroit tax rates are at their current legal limits, and that even if the City was legally able to raise taxes, its residents cannot afford to pay additional taxes. Detroiters already have a higher tax rate than anywhere in Michigan, and even with that revenue the City has not been able to keep up with its basic obligations, both to its citizens and creditors. Detroit simply cannot raise enough revenue to meet its current obligations, and that is a situation that is only projected to get worse absent a bankruptcy filing.

**Failure to Meet Obligations to Citizens Creates Failure to Meet Obligations to Creditors.** Mr. Orr's letter and prior report put in stark reality the dramatic impact of the City's plummeting population. While many who love Detroit still live there, many other Detroiters at heart could not justify the sacrifice of adequate services. The City's population has declined 63% from its peak, including a 28% decline since 2000. That exodus has brought Detroit to the point that it cannot satisfy promises it made in the past. A decreasing tax base has made meeting obligations to creditors impossible. Mr. Orr is correct when he says the City cannot raise the necessary revenue through tax increases, and it cannot save the necessary revenue through reducing spending on basic services. Attempts to do so would only decrease the population and tax base further, making a new round of promises unfulfillable.

**Only One Feasible Path Offers a Way Out.** The citizens of Detroit need and deserve a clear road out of the cycle of ever-decreasing services. The City's creditors, as well as its many dedicated public servants, deserve to know what promises the City can and will keep. The only way to do those things is to radically restructure the City and allow it to reinvent itself without the burden of impossible obligations. Despite Mr. Orr's best efforts, he has been unable to reach a restructuring plan with the City's creditors. I therefore agree that the only feasible path to a stable and solid Detroit is to file for bankruptcy protection.

The past weeks have reaffirmed my confidence that Mr. Orr has the right priorities when it comes to the City of Detroit. I am reassured to see his prioritization of the needs of citizens to have improved services. I know we share a concern for the public employees who gave years of service to the City and now fear for their financial future in retirement, and I am confident that all of the City's creditors will be treated fairly in this process. We all believe that the City's future must allow it to make the investment it needs in talent and in infrastructure, all while making only the promises it can keep. Let us remain in close communication regarding measures Mr. Orr might take so we can discuss the possible impacts that might occur both within and outside of the City.

July 18, 2013

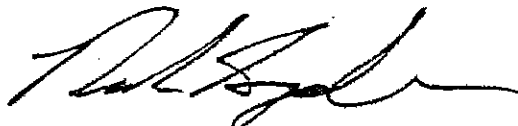
Contingencies

2012 PA 436 provides that my approval of the recommendation to commence a Chapter 9 proceeding may place contingencies on such a filing. MCL 141.1558(1). I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency – a requirement that the plan be legally executable. 11 USC 943(b)(4).

Conclusion

In conclusion, I find Mr. Orr's Recommendation Letter to be persuasive, especially in conjunction with his prior reports laying out the level of services the City can provide and its financial ability to meet its obligations to creditors. I am also convinced that Mr. Orr has exercised his best efforts to arrive at a restructuring plan with the City's creditors outside of bankruptcy, to no avail. Given these facts, the only feasible path to sustainability for the City of Detroit is a filing under chapter 9 of the bankruptcy code. Therefore, I hereby approve Mr. Orr's recommendation and authorize the emergency manager to make such a filing on behalf of the City of Detroit and to take all actions that are necessary and appropriate toward that end.

Sincerely,



Richard D. Snyder  
Governor  
State of Michigan

## EXHIBIT 4

UNITED STATES BANKRUPTCY COURT  
Eastern District of Michigan

In re:

City of Detroit, Michigan,

Debtor.

Case No. 13-

**BANKRUPTCY PETITION COVER SHEET**

(The debtor must complete and file this form with the petition in every bankruptcy case. Instead of filling in the boxes on the petition requiring information on prior and pending cases, the debtor may refer to this form.)

**Part 1**

"Companion cases," as defined in L.B.R. 1073-1(b), are cases involving any of the following: (1) The same debtor; (2) A corporation and any majority shareholder thereof; (3) Affiliated corporations; (4) A partnership and any of its general partners; (5) An individual and his or her general partner; (6) An individual and his or her spouse; or (7) Individuals or entities with any substantial identity of financial interest or assets.

Has a "companion case" to this case ever been filed at any time in this district or any other district? Yes ☐ No ☒  
(If yes, complete Part 2.)

**Part 2**

For each companion case, state in chronological order of cases:

*Not applicable*

If the present case is a Chapter 13 case, state for each companion case:

*Not applicable*

**Part 3 - In a Chapter 13 Case Only**

The Debtor(s) certify, re: 11 U.S.C. § 1328(f):  
[indicate which]

*Not Applicable*

- ☐ Debtor(s) received a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) did not receive a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) received a discharge in a Chapter 13 case filed during the 2-years before filing this case.
- ☐ Debtor(s) did not receive a discharge in a Chapter 13 case filed during the 2-years before filing this case.

I declare under penalty of perjury that I have read this form and that it is true and correct to the best of my information and belief.

Kevyn D. Orr  
Emergency Manager  
City of Detroit

David G. Helman (OH 0038271)  
Heather Lennox (OH 0059649)  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
dghelman@jonesday.com  
hlennox@jonesday.com

Bruce Bennett (CA 105430)  
JONES DAY  
555 South Flower Street  
Fifteenth Floor  
Los Angeles, CA 90071  
Telephone: (213) 243-2382  
Facsimile: (213) 243-2539  
bbennett@jonesday.com

Jonathan S. Green (MI P33140)  
Stephen S. LaPlante (MI P48063)  
MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
150 West Jefferson  
Suite 2500  
Detroit, MI 48226  
Telephone: (313) 963-6420  
Facsimile: (313) 496-7500  
jgreen@millercaanfield.com  
laplante@millercaanfield.com

Date: July 18, 2013

ATTORNEYS FOR THE CITY OF DETROIT, MICHIGAN

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

## VOLUNTARY PETITION

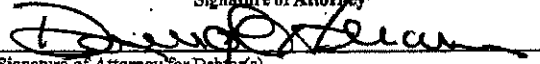
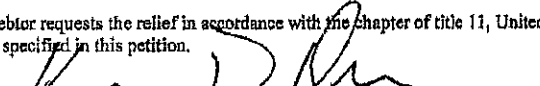
Name of Debtor (if individual, enter Last, First, Middle): <b>City of Detroit, Michigan</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): <b>38-6004606</b>	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): <b>2 Woodward Avenue Suite 1126 Detroit, Michigan</b>	Street Address of Joint Debtor (No. and Street, City, and State):
<b>48226</b>	<b>ZIP CODE</b>
County of Residence or of the Principal Place of Business: <b>Wayne</b>	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
<b>ZIP CODE</b>	<b>ZIP CODE</b>
Location of Principal Assets of Business Debtor (if different from street address above):	
<b>ZIP CODE</b>	

<b>Type of Debtor</b> (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) <b>Municipality</b>	<b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box.) <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:	<b>Tax-Exempt Entity</b> (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	<b>Nature of Debts</b> (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
<b>Filing Fee</b> (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> <b>Check one box:</b> <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). <b>Check if:</b> <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4/01/16 and every three years thereafter). <b>Check all applicable boxes:</b> <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.										<b>THIS SPACE IS FOR COURT USE ONLY</b>
<b>Estimated Number of Creditors</b> <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input checked="" type="checkbox"/> Over 100,000										
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion										
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion										

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<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): <b>City of Detroit, Michigan</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)</b>			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)</b>			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<b>Exhibit A</b> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)  <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts.)  I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).  X _____ Signature of Attorney for Debtor(s) (Date)	
<b>Exhibit C</b> Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input checked="" type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input type="checkbox"/> No.			
<b>Exhibit D</b> (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)  <input type="checkbox"/> Exhibit D, completed and signed by the debtor, is attached and made a part of this petition.  If this is a joint petition: <input type="checkbox"/> Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box.) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes.)  <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  <div style="text-align: right; margin-right: 100px;">           _____            (Name of landlord that obtained judgment)         </div> <div style="text-align: right; margin-right: 100px;">           _____            (Address of landlord)         </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		<b>Name of Debtor(s):</b> <p style="text-align: center;">City of Detroit, Michigan</p>	
<b>Signatures</b>			
<p style="text-align: center;"><b>Signature(s) of Debtor(s) (Individual/Joint)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.          [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.          [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____          Signature of Debtor</p> <p>X _____          Signature of Joint Debtor</p> <p>Telephone Number (if not represented by attorney)</p> <p>Date</p>		<p style="text-align: center;"><b>Signature of a Foreign Representative</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____          (Signature of Foreign Representative)</p> <p>_____          (Printed Name of Foreign Representative)</p>	
<p style="text-align: center;"><b>Signature of Attorney*</b></p> <p>X           Signature of Attorney for Debtor(s)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <p><b>David G. Heiman</b>  <b>Heather Lennox</b>            JONES DAY            North Point            901 Lakeside Avenue            Cleveland, OH 44114            Tel: (216) 586-3939            Fax: (216) 579-0212  <a href="mailto:dheiman@jonesday.com">dheiman@jonesday.com</a>  <a href="mailto:hlennox@jonesday.com">hlennox@jonesday.com</a></p> </div> <div style="width: 30%;"> <p><b>Bruce Bennett</b>            JONES DAY            555 South Flower Street            Fiftieth Floor            Los Angeles, CA 90071            Tel: (213) 243-2382            Fax: (213) 243-2539  <a href="mailto:bbennett@jonesday.com">bbennett@jonesday.com</a></p> </div> <div style="width: 30%;"> <p><b>Jonathan S. Green</b>  <b>Stephen S. LaPlante</b>            MILLER, CANFIELD            PADDOCK AND STONE,            P.L.C.            150 West Jefferson            Suite 2500            Detroit, MI 48226            Tel: (313) 963-6420            Fax: (313) 496-7500  <a href="mailto:green@millercanfield.com">green@millercanfield.com</a>  <a href="mailto:laplante@millercanfield.com">laplante@millercanfield.com</a></p> </div> </div> <p><u>July 18, 2013</u>          Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>		<p style="text-align: center;"><b>Signature of Non-Attorney Bankruptcy Petition Preparer</b></p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____          Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____          Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____          Address</p> <p>X _____          Signature</p> <p>_____          Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><small>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</small></p>	
<p style="text-align: center;"><b>Signature of Debtor (Corporation/Partnership)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X           Signature of Authorized Individual</p> <p><b>Kevin B. Orr</b>          Printed Name of Authorized Individual</p> <p><b>Emergency Manager, City of Detroit</b>          Title of Authorized Individual</p> <p><u>July 18, 2013</u>          Date</p>			



*[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]*

## UNITED STATES BANKRUPTCY COURT

Eastern District of Michigan

In re City of Detroit, Michigan, ) Case No. 13-  
Debtor. )  
)  
) Chapter 9

### EXHIBIT "C" TO VOLUNTARY PETITION

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

Certain properties owned by City of Detroit, Michigan (the "City") have been (a) identified by the City as being structurally unsound and in danger of collapse and (b) scheduled for demolition (collectively, the "Demolition Properties"). The Demolition Properties may pose a threat of imminent harm to public health and/or safety. A list of the Demolition Properties is attached hereto as Schedule 1.

To its knowledge, the City currently does not own any property that is a Superfund Site as designated by the United States Environmental Protection Agency. The City currently owns (in whole or in part) various so-called "Brownfields properties" (collectively, the "Brownfields Properties") regulated by the Michigan Department of Environmental Quality. Currently, one or more private parties (rather than the City) are addressing any identified environmental conditions that might be present at the Brownfields Properties. To the City's knowledge, none of the Brownfields Properties are alleged to pose a threat of imminent and identifiable harm to the public health or safety. A representative list of certain Brownfields Properties is attached hereto as Schedule 2.

In addition to the foregoing, the City owns or is possession of approximately 60,000 parcels of land within the City's geographic boundaries and more than 7,000 vacant structures that are not designated as Demolition Properties or Brownfields Properties (collectively, the "Blighted Properties"). It is possible that some of the Blighted Properties could pose a threat to public health or safety. Although the City is not aware of any Blighted Properties currently posing a threat of "imminent and identifiable harm," the City notes the existence of these properties on this Exhibit C out of an abundance of caution.

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

See attached Schedule 1 with respect to the Demolition Properties and the attached Schedule 2 with respect to the Brownfields Properties.

**SCHEDULE 1****City of Detroit, Michigan Demolition Properties**

<u>Street Address</u>	<u>Property Type</u>
3922 14 <sup>th</sup>	Residential
3654 30 <sup>th</sup>	Residential
12032 Abington	Residential
2668 Anderdon	Residential
821 Anderson	Commercial
13501 Appoline	Residential
7593 Arcola	Residential
14125 Ardmore	Residential
13476 Arlington	Residential
13544 Arlington	Residential
10384 Aurora	Residential
2457 Beaubien	Commercial
2486 Beaubien	Residential
14371 Bentler	Residential
5317 Bewick	Residential
19411 Blake	Residential
19700 Bloom	Residential
6072 Braden	Residential
9665 Broadstreet	Residential
9616 Bryden	Residential
6810 Bulwer	Commercial
1454 Burlingame	Residential
13469 Caldwell	Residential
2009 Campbell	Residential
14203 E. Canfield	Residential
19221 Cardoni	Residential
19324 Carrie	Residential
7626 Central	Residential
2535 Chalmers	Residential
8115 Chamberlain	Residential
13199 Charest	Residential
20190 Charleston	Residential
3164 Charlevoix	Commercial
5083 Chatsworth	Residential
5717 Chene	Commercial
3636 Cicotte	Residential
3032 Clements	Residential
1117 Concord	Residential
6628 Crane	Residential
1243 Crawford	Residential
2012 Dalzelle	Residential
20258 Danbury	Residential
7787 Dayton	Residential
8475 Dearborn	Residential
1950 Dearing	Residential
1956 Dearing	Residential
1960 Dearing	Residential
2027 Dearing	Residential
8839 Dennison	Residential

<u>Street Address</u>	<u>Property Type</u>
20245 Derby	Residential
125 Dey	Residential
14190 Dolphin	Residential
229 Edmund Pl.	Commercial
3333 Edsel	Residential
203 Erskine	Residential
209 Erskine	Residential
4417 Ewers	Residential
19332 Exeter	Residential
19339 Exeter	Residential
20467 Exeter	Residential
1731 Fischer	Residential
13556 Fleming	Residential
7666 W. Fort	Commercial
5334 French Rd.	Residential
6007 Frontenac	Commercial
18627 Gable	Residential
3727 Garland	Residential
3917 Garland	Residential
4466 Garland	Residential
4470 Garland	Residential
4003 Gilbert	Residential
12511 Glenfield	Residential
14232 Goddard	Residential
14239 Goddard	Residential
11648 Grandmont	Residential
5801 Grandy [1]	Commercial
5801 Grandy [2]	Commercial
2937 Grant	Residential
5589 Guilford	Residential
222 S. Harbaugh	Residential
2900 Harding	Residential
8815 Harper	Commercial
17226 Hasse	Residential
7975 Hathon	Residential
19227 Havana	Residential
19309 Havana	Residential
19321 Havana	Residential
19397 Havana	Residential
7886 Helen	Residential
6200 Hereford	Residential
9905 Herkimer	Residential
1955 Highland	Residential
1778 Holcomb	Residential
4407 Holcomb	Residential
4412 Holcomb	Residential
7202 Holmes	Residential
9278 Holmur	Residential
19925 Hoover	Commercial

<u>Street Address</u>	<u>Property Type</u>
6360 Horatio	Residential
15518 Idaho [1]	Commercial
15518 Idaho [2]	Commercial
12748 Ilene	Residential
20136 Ilene	Residential
15778 Iliad	Residential
5290 Ivanhoe	Residential
6435 Julian	Commercial
8545 Kenney	Residential
13989 Kentucky	Residential
13301 Kercheval	Commercial
5925 Kopernick	Residential
17137 Lamont	Residential
17208 Lamont	Residential
3839 Lanman	Residential
5206 Lawndale	Residential
2194 Lemay	Residential
3958 Lemay	Residential
1601 Liddesdale	Residential
1029 Liebold	Residential
5065 Lillibridge	Residential
15744 Livernois	Commercial
12558 Longview	Residential
12767 Loretto	Residential
8881 Louis	Residential
13441 Lumpkin	Residential
14242 Mack (a/k/a 3181 Lakewood)	Commercial
12368 MacKay	Residential
12393 MacKay	Residential
12398 MacKay	Residential
13569 MacKay	Residential
13909 MacKay	Residential
13927 MacKay	Residential
13952 MacKay	Residential
13977 MacKay	Residential
13983 MacKay	Residential
459 Manistique	Residential
12000 Mansfield	Residential
8129 Marcus	Residential
4588 Marseilles	Residential
9343 N. Martindale	Residential
8320 Maxwell	Residential
8326 Maxwell	Residential
4766 McDougall	Commercial
2122 Meade	Residential
2420 Meade	Residential
3697 Medbury	Residential
11654 Meyers	Residential
8911 Milner	Residential
2652 Norman	Residential
10002 Nottingham	Residential

<u>Street Address</u>	<u>Property Type</u>
5115 Nottingham	Residential
8811 Olivet	Residential
8917 Otsego	Residential
15799 Parkside	Residential
18401 Pembroke	Residential
11172 Promenade	Residential
2101 Puritan	Commercial
5807 Renville	Residential
1957 Richton	Residential
534 W. Robinwood	Residential
6119 Rohns	Residential
14381 Rosa Parks Blvd.	Unknown
11735 Rutherford	Residential
6835 Seminole	Residential
5737 E. Seven Mile	Commercial
2008 Sharon	Residential
13422 Shields	Residential
10201 Shoemaker	Commercial
10956 Shoemaker	Commercial
6750 Sparta	Residential
14291 Spring Garden	Commercial
4467 St. Clair	Residential
6915 St. John	Residential
7180 St. John	Residential
18805 St. Louis	Commercial
1928 Stanley	Residential
12746 Strasburg	Residential
8104 Thaddeus	Residential
4832 Toledo	Residential
6195 Townsend	Residential
9778 Traverse	Residential
17231 Trinity	Residential
2634 Tuxedo	Residential
2522-4 Tyler	Residential
2660 Tyler	Residential
9526 Van Dyke	Commercial
2030 Vinewood	Residential
5757 Vinewood	Commercial
15451 Virgil	Residential
15300 E. Warren (Bldgs. 101 & 102)	Commercial
64 Watson	Commercial
6414 Willette	Unknown
4364 Woodhall	Residential
11640 Woodmont	Residential
12075 Woodmont	Residential
12136 Woodmont	Residential
12153 Woodmont	Residential
11365 Yosemite	Residential
11402 Yosemite	Residential

**SCHEDULE 2**

**City of Detroit, Michigan Brownfields Properties**

<b><u>Name of Site</u></b>	<b><u>Description</u></b>
Former Detroit Coke Site	7819 West Jefferson Avenue
Bellevue Development (Uniroyal) Site	600 East Jefferson, 43-acre former Uniroyal site located in the East Riverfront District, bounded by Jefferson Avenue (to the north), MacArthur Bridge (to the east), Detroit River (to the south) and Meldrum Street (to the west).
Riverside Park Site	3085 West Jefferson Avenue. West Grand Boulevard and 24th Street along the Detroit River.



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**EMERGENCY MANAGER  
CITY OF DETROIT**

**ORDER No. 13**

**FILING OF A PETITION UNDER CHAPTER 9  
OF TITLE 11 OF THE UNITED STATES CODE**

---

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER  
FOR THE CITY OF DETROIT  
PURSUANT TO MICHIGAN'S PUBLIC ACT 436 OF 2012,  
KEVYN D. ORR, THE EMERGENCY MANAGER,  
ISSUES THE FOLLOWING ORDER:

---

*Whereas*, on March 28, 2013, Michigan Public Act 436 of 2012 ("PA 436") became effective and Kevyn D. Orr became the Emergency Manager (the "EM") for the City of Detroit (the "City") with all the powers and duties provided under PA 436; and

Pursuant to section 9(2) of PA 436, the EM "shall act for and in the place and stead of" the Detroit Mayor and City Council; and

Section 9(2) of PA 436 also grants the EM "broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the [City] and the [City's] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare;" and

Pursuant to section 10(1) of PA 436, the EM may "issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the [EM] considers necessary to accomplish the purposes of this act;" and

Section 18(1) of PA 436 provides that "[i]f, in the judgment of the [EM], no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the [EM] may recommend to the governor and the

state treasurer that the local government be authorized to proceed under chapter 9" of title 11 of the United States Code (the "Bankruptcy Code"); and

Section 18(1) of PA 436 further provides that "[i]f the governor approves of the [EM's] recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision.... Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9 [of the Bankruptcy Code]. This section empowers the local government for which an emergency manager has been appointed to become a debtor under [the Bankruptcy Code], as required by section 109 of [the Bankruptcy Code], and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9" of the Bankruptcy Code; and

In accordance with section 18 of PA 436, the EM has recommended to the Governor of Michigan (the "Governor") and the Michigan State Treasurer (the "State Treasurer") that the City be authorized to proceed under chapter 9 of the Bankruptcy Code (the "Recommendation"); and

The Governor has provided the State Treasurer and the EM with his written approval of the Recommendation, a true and correct copy of which is attached hereto as Exhibit A, thereby authorizing the City to proceed under chapter 9.

**It is hereby ordered that:**

1. The City shall file a petition for relief under chapter 9 of the Bankruptcy Code (the "Petition") in the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court").
2. The City's Corporation Counsel, financial advisors, outside legal advisors and other officers and employees of the City, as applicable, are hereby authorized and directed, on behalf of and in the name of the City, to execute and verify the Petition and related Bankruptcy Court filings and perform any and all such acts as are reasonable, appropriate, advisable, expedient, convenient, proper or necessary to carry out this Order, as and to the extent directed by the EM or his designee.
3. If any component of this Order is declared illegal, unenforceable or ineffective in a legal or other forum or proceeding such component shall be deemed severable so that all other components contained in this Order shall remain valid and effective.
4. This Order is effective immediately upon the date of execution below.
5. This Order shall be distributed to the Mayor, City Council members and all department heads.

6. The EM may modify, rescind, or replace this Order at any time.

Dated: July 18, 2013

By: 

Kevyn D. Orr  
Emergency Manager  
City of Detroit

cc: State of Michigan Department of Treasury  
Mayor David Bing  
Members of Detroit City Council

# **EXHIBIT A**

## **Governor's Written Approval of Recommendation**

RECEIVED by Michigan Court of Appeals 7/19/2013 12:30:05 PM





STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

VIA HAND AND ELECTRONIC DELIVERY

July 18, 2013

Kevyn D. Orr  
Emergency Manager  
City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave., Suite 1126  
Detroit, MI 48226

Andrew Dillon  
State Treasurer  
Michigan Department of Treasury  
4th Floor Treasury Building  
430 W. Allegan Street  
Lansing, MI 48992

Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding

Dear Mr. Orr and Mr. Dillon,

I have reviewed Mr. Orr's letter of July 16, 2013, requesting my approval of his recommendation to commence a bankruptcy proceeding for the City of Detroit under Chapter 9 of title 11 of the United States Code. As you know, state law requires that any such recommendation must first be approved by the Governor before the emergency manager may take that step. MCL 141.1558. For the reasons discussed below, I hereby approve that recommendation and authorize Mr. Orr to make such a filing.

**Current Financial Emergency**

In reviewing Mr. Orr's letter, his Financial and Operating Plan, and his report to creditors, it is clear that the financial emergency in Detroit cannot be successfully addressed outside of such a filing, and it is the only reasonable alternative that is available. In other words, the City's financial emergency cannot be satisfactorily rectified in a reasonable period of time absent this filing.

I have reached the conclusion that this step is necessary after a thorough review of all the available alternatives, and I authorize this necessary step as a last resort to return this great City to financial and civic health for its residents and taxpayers. This decision comes in the wake of 60 years of decline for the City, a period in which reality was often

July 18, 2013

ignored. I know many will see this as a low point in the City's history. If so, I think it will also be the foundation of the City's future – a statement I cannot make in confidence absent giving the City a chance for a fresh start, without burdens of debt it cannot hope to fully pay. Without this decision, the City's condition would only worsen. With this decision, we begin to provide a foundation to rebuild and grow Detroit.

Both before and after the appointment of an emergency manager, many talented individuals have put enormous energy into attempting to avoid this outcome. I knew from the outset that it would be difficult to reverse 60 years of decline in which promises were made that did not reflect the reality of the ability to deliver on those promises. I very much hoped those efforts would succeed without resorting to bankruptcy. Unfortunately, they have not. We must face the fact that the City cannot and is not paying its debts as they become due, and is insolvent.

After reading Mr. Orr's letter, the Financial and Operating Plan, and the report to creditors, I have come to four conclusions.

1. Right now, the City cannot meet its basic obligations to its citizens.
2. Right now, the City cannot meet its basic obligations to its creditors.
3. The failure of the City to meet its obligations to its citizens is the primary cause of its inability to meet its obligations to its creditors.
4. The only feasible path to ensuring the City will be able to meet obligations in the future is to have a successful restructuring via the bankruptcy process that recognizes the fundamental importance of ensuring the City can meet its basic obligations to its citizens.

I will explain how I came to each conclusion.

**Inability to Meet Obligations to Its Citizens.** As Mr. Orr's Financial and Operating Plan and the June 14 Creditor Proposal have noted, the scale and depth of Detroit's problems are unique. The City's unemployment rate has nearly tripled since 2000 and is more than double the national average. Detroit's homicide rate is at the highest level in nearly 40 years, and it has been named as one of the most dangerous cities in America for more than 20 years. Its citizens wait an average of 58 minutes for the police to respond to their calls, compared to a national average of 11 minutes. Only 8.7% of cases are solved, compared to a statewide average of 30.5%. The City's police cars, fire trucks, and ambulances are so old that breakdowns make it impossible to keep up the fleet or properly carry out their roles. For instance, only a third of the City's ambulances were in service in the first quarter of 2013. Similarly, approximately 40% of the City's street lights were not functioning in that quarter and the backlog of complaints is more than 3,300 long. Having large swaths of largely abandoned structures -- approximately 78,000 -- creates additional public safety problems and reduces the quality of life in the City. Mr. Orr is correct that meeting the obligations the City has to

July 18, 2013

its citizens to provide basic services requires more revenue devoted to services, not less.

**Inability to Meet Obligations to Its Creditors.** The City has more than \$18 billion in accrued obligations. A vital point in Mr. Orr's letter is that Detroit tax rates are at their current legal limits, and that even if the City was legally able to raise taxes, its residents cannot afford to pay additional taxes. Detroiters already have a higher tax rate than anywhere in Michigan, and even with that revenue the City has not been able to keep up with its basic obligations, both to its citizens and creditors. Detroit simply cannot raise enough revenue to meet its current obligations, and that is a situation that is only projected to get worse absent a bankruptcy filing.

**Failure to Meet Obligations to Citizens Creates Failure to Meet Obligations to Creditors.** Mr. Orr's letter and prior report put in stark reality the dramatic impact of the City's plummeting population. While many who love Detroit still live there, many other Detroiters at heart could not justify the sacrifice of adequate services. The City's population has declined 63% from its peak, including a 28% decline since 2000. That exodus has brought Detroit to the point that it cannot satisfy promises it made in the past. A decreasing tax base has made meeting obligations to creditors impossible. Mr. Orr is correct when he says the City cannot raise the necessary revenue through tax increases, and it cannot save the necessary revenue through reducing spending on basic services. Attempts to do so would only decrease the population and tax base further, making a new round of promises unfulfillable.

**Only One Feasible Path Offers a Way Out.** The citizens of Detroit need and deserve a clear road out of the cycle of ever-decreasing services. The City's creditors, as well as its many dedicated public servants, deserve to know what promises the City can and will keep. The only way to do those things is to radically restructure the City and allow it to reinvent itself without the burden of impossible obligations. Despite Mr. Orr's best efforts, he has been unable to reach a restructuring plan with the City's creditors. I therefore agree that the only feasible path to a stable and solid Detroit is to file for bankruptcy protection.

The past weeks have reaffirmed my confidence that Mr. Orr has the right priorities when it comes to the City of Detroit. I am reassured to see his prioritization of the needs of citizens to have improved services. I know we share a concern for the public employees who gave years of service to the City and now fear for their financial future in retirement, and I am confident that all of the City's creditors will be treated fairly in this process. We all believe that the City's future must allow it to make the investment it needs in talent and in infrastructure, all while making only the promises it can keep. Let us remain in close communication regarding measures Mr. Orr might take so we can discuss the possible impacts that might occur both within and outside of the City.

July 18, 2013

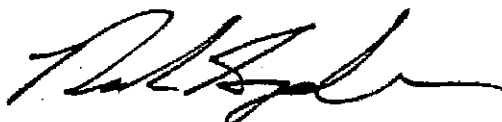
Contingencies

2012 PA 436 provides that my approval of the recommendation to commence a Chapter 9 proceeding may place contingencies on such a filing. MCL 141.1558(1). I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency – a requirement that the plan be legally executable. 11 USC 943(b)(4).

Conclusion

In conclusion, I find Mr. Orr's Recommendation Letter to be persuasive, especially in conjunction with his prior reports laying out the level of services the City can provide and its financial ability to meet its obligations to creditors. I am also convinced that Mr. Orr has exercised his best efforts to arrive at a restructuring plan with the City's creditors outside of bankruptcy, to no avail. Given these facts, the only feasible path to sustainability for the City of Detroit is a filing under chapter 9 of the bankruptcy code. Therefore, I hereby approve Mr. Orr's recommendation and authorize the emergency manager to make such a filing on behalf of the City of Detroit and to take all actions that are necessary and appropriate toward that end.

Sincerely,



Richard D. Snyder  
Governor  
State of Michigan

## EXHIBIT 5

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. CANADY

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

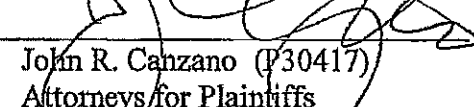
JOHN R. CANZANO (P30417)  
McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

**MOTION FOR DECLARATORY JUDGMENT**  
**AND EXPEDITED HEARING PURSUANT TO MCR 2.605(D),**  
**OR IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION.**

For the reasons stated in the attached brief, Plaintiffs request that this Court order an expedited hearing and grant a declaratory judgment and permanent injunction, or, in the alternative, a preliminary injunction in their favor.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By:   
John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

Date: July 3, 2013

13-53846-tjt Doc 1221-6 Filed 10/17/13

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RECEIVED by Michigan Court of Appeals 7/19/2013 12:30:05 PM

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. CANARY

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

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JOHN R. CANZANO (P30417)  
McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

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**BRIEF IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND EXPEDITED  
HEARING PURSUANT TO MCR 2.605(D), OR  
IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION.**

This action seeks a declaratory judgment that the "Local Financial Stability and Choice Act," 2012 PA 436, MCL 141.1541 *et seq.* ("PA 436") is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution, which expressly protects vested pension rights by requiring that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions . . . *shall not be diminished or impaired . . .*"

Pursuant to MCR 2.605(D), "[t]he court may order a speedy hearing of an action for declaratory relief and may advance it on the calendar" in appropriate cases. This is such a case. Plaintiffs, a City of Detroit pensioner who retired 13 years ago, and a City of Detroit employee with 17 years of accrued vested service, are facing an imminent threat that their vested pension rights will be irreparably and permanently diminished and impaired in a Chapter 9 bankruptcy proceeding authorized by PA 436, in direct violation of Article IX Section 24 of the Michigan Constitution. In the alternative, Plaintiffs are seeking a preliminary injunction enjoining Defendant Governor Snyder and Defendant State Treasurer Dillon from authorizing a Chapter 9 bankruptcy under PA 436.

### FACTS

Plaintiffs incorporate herein the facts stated in the Verified Complaint. This case presents essentially a pure question of law. The pertinent facts are not in dispute.

Kevyn Orr currently serves as the Emergency Manager of the City of Detroit under PA 436. Under Section 18 of PA 436, Defendant Governor Snyder is empowered to authorize Orr to file for Chapter 9 bankruptcy on behalf of the City if the Governor approves the Emergency Manager's recommendation to do so.

On June 14, 2013, Emergency Manager Orr issued a "Proposal for Creditors" which expressly states that *"there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons."* The same day, Emergency Manager Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will "not . . . protect" retirees in bankruptcy court. As the Emergency Manager stated in the interview:



Q. You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law.

Q. Which the Ninth Circuit agrees with for now.

A. It is what it is - so we said that in a soft way of saying, "Don't make us go into bankruptcy." **If you think your state-vested pension rights, either as an employee or a retiree - *that's not going to protect you.* If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate.** The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy. (Emphasis added.)

### LAW

Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution, because PA 436 permits accrued pension benefits to be diminished or impaired in direct contravention of the Constitution. Article IX Section 24 provides that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof *which shall not be diminished or impaired* thereby." There could not be a more clear and plain constitutional mandate. Article IX Section 24 means what it says: *accrued pension benefits "shall not be diminished or impaired."* See, *AFT Michigan v State of Michigan*, 297 Mich App 597, 610; 825 NW2d 595 (2012); *Mt Clemens Firefighters Union, Local 838, IAFF v City of Mt Clemens*, 58 Mich App 635, 644; 228 NW2d 500 (1975). The Official Record of the 1963 Constitutional Convention further supports that no governmental entity or its officials can do anything to diminish or impair vested pension benefits:

This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a

contractual obligation which cannot diminished or impaired by the action of its officials or governing body.

2 Official Record, Constitutional Convention 1961, p. 3402 (emphasis added).

Chapter 9 of the U.S. Bankruptcy Code, 11 USC §§901 *et seq.*, provides a process by which a municipality may file for bankruptcy. However, because of federalism concerns and to protect the states' sovereignty, Chapter 9 prohibits a municipality from filing for bankruptcy unless "specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." 11 USC §109(c)(2). Indeed, many states simply do not authorize their municipalities to file for bankruptcy at all. Absent such authorization, federal bankruptcy courts have no jurisdiction under Chapter 9 over a municipality as a debtor. See *Ashton v Cameron County Water District No 1*, 298 US 513; 56 S Ct 892; 80 L Ed 1309 (1936); and *United States v Bekins*, 304 US 27; 58 S Ct 811; 82 L Ed 1137 (1938).

Section 18 of PA 436 authorizes a municipality to commence Chapter 9 bankruptcy proceedings if the emergency manager appointed under PA 436 recommends, and the Governor authorizes, that the municipality file for bankruptcy under Chapter 9.

Notably, PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. But PA 436 nowhere requires that the Governor shall not authorize a Chapter 9 bankruptcy filing if accrued pension benefits may be diminished or impaired thereby in violation of Article IX Section 24. *For example*, Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan "shall provide" for "the timely deposit of required payments to the pension fund for the local government." *For example*, Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and

benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.” *For example*, Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

By contrast, Section 18 of PA 436, which empowers the Governor to authorize a municipality to file for bankruptcy under Chapter 9, *nowhere* requires that the Governor shall not authorize such filing if accrued pension benefits may be unconstitutionally diminished or impaired. Clearly, the Legislature understood and honored the constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature *omitted* any constitutional protection against the impairment or diminishment of accrued pension benefits when the Governor authorizes a Chapter 9 bankruptcy filing under Section 18 of PA 436. In other words, by expressly *including* the protection of Article IX Section 24 in various sections of the law, but not Section 18, PA 436 plainly *excludes* those protections from Section 18.<sup>1</sup> Accordingly, PA 436 is unconstitutional on its face because it does not prohibit a municipality from proceeding under Chapter 9 if accrued pension benefits may be unconstitutionally diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution.

Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional under Article IX Section 24 of the Michigan Constitution because PA 436 does not prohibit the

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<sup>1</sup> This conclusion is supported by the traditional maxim “*expressio unius est exclusio alterius*” (to express one thing is to exclude another). *See, e.g., Smitter v Thornapple Twp*, \_\_\_ Mich \_\_\_, 2013 Mich Lexis 912, \*19, n 34 (June 19, 2013); *Johnson v Recca*, 492 Mich 169, 176, n 4; 821 NW2d 520 (2012).

Governor from authorizing a Chapter 9 bankruptcy filing which threatens to unconstitutionally diminish or impair the Plaintiffs' accrued pension benefits.

Plaintiffs' need for a Declaratory Judgment is urgent. The facts show that a request by the Emergency Manager to proceed under Chapter 9 is imminent, because he has given every indication that he intends to impair or diminish accrued pension benefits in contravention of Article IX Section 24 of the Michigan Constitution. Plaintiff's' rights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9.

This case presents an actual controversy entitling Plaintiffs to a declaratory judgment because the facts indicate "an adverse interest necessitating the sharpening of the issues raised." *Lansing School Education Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n20; 792 NW2d 686 (2010), quoting *Associated Builders and Contractors v Wilbur*, 472 Mich 117, 126; 693 NW2d 374 (2005). Plaintiffs are entitled to a declaratory judgment here "to obtain adjudication of rights *before* an actual injury occurs [and] to settle a matter *before* it ripens into a violation of the law . . ." *Rose v State Farm Mutual Auto Insurance Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006). (emphasis supplied)

This case presents the classic case for declaratory relief. Plaintiffs cannot wait to protect their constitutional rights until after the Governor authorizes a Chapter 9 filing. "Declaratory relief is designed to give litigants access to courts to preliminarily determine their rights. . . . the court is not precluded from reaching issues before actual injuries or losses have occurred." *City of Detroit v State of Michigan*, 262 Mich App 542, 550-551; 686 NW2d 514 (2004), citing *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978) (explaining that plaintiff's request for declaratory relief "does not rely on the state having already violated the zoning ordinance [but] rather properly requests a determination whether the state had the

authority to proceed as planned"). Moreover, the Emergency Manager is admittedly using the threat of bankruptcy to force vested pensioners and employees to accede to his attempts to diminish and impair their accrued benefits now. Thus the harm to Plaintiffs is both imminent and actual.

Under MCR 2.605(D), this Court can and should order a speedy hearing and advance this case on the calendar. The need is urgent. *See, Longhofer, 3 Michigan Court Rules Practice* §2605.7 at 390. (Speedy hearing under 2.605(D) "will be done most frequently in actions involving clear-cut legal issues of public importance, with no factual issues to be tried"). *See also, Kuhn v Department of Treasury*, 384 Mich 378, 386-387; 183 NW2d 796 (1971) ("moving party is entitled to an expeditious disposition by the courts so that the right . . . guaranteed by the constitution is not jeopardized."); *State Farm v Savickas*, 1998 Mich App Lexis 984 (1998) (trial court accelerated trial and entered judgment, as authorized by MCR 2.605(D)).

In the alternative, Plaintiffs are entitled to a preliminary injunction. In deciding whether to issue a preliminary injunction, the court must weigh the following factors:

Whether (1) the moving party made [a] required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is not issued.

First, Plaintiffs will be irreparably harmed if the Governor authorizes a Chapter 9 filing in which the Emergency Manager has stated he intends to diminish or impair vested pension benefits in violation of Article IX Section 24. Because bankruptcy may foreclose further options or financial relief, this is not a case where money damages could remedy the constitutional impairment of Plaintiff's pension rights. Second, the Governor and Treasurer will not suffer any harm if they are enjoined from authorizing a Chapter 9 bankruptcy that would violate the Constitution's protection for Detroit's vested pensioners and employees. "[I]f the plaintiff shows

a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere its enjoinderment." *Déjà vu of Nashville v Metro Gov't of Nashville and Davidson City*, 274 F3d 377, 400 (CA6, 2001). Third, for all the reasons stated above in support of a declaratory judgment, Plaintiffs are likely to succeed on the merits. Fourth, the public interest will be saved by upholding the Constitution's protection for thousands of long term City of Detroit retirees.

### CONCLUSION

Plaintiffs respectfully request that this Court grant a declaratory judgment and permanent injunction and/or preliminary injunction in their favor, as specified in the Verified Complaint.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: 

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

Date: July 3, 2013

## EXHIBIT 6

## STATE OF MICHIGAN

## IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

No. 13-734-CZ

v

HON. ROSEMARIE AQUILINA

THE STATE OF MICHIGAN, RICHARD  
SNYDER, as Governor of the State of  
Michigan, and ANDY DILLON, as Treasurer  
of the State of Michigan,

Defendants.

John R. Canzano (P30417)  
McKnight, McCloy, Canzano, Smith & Radtke,  
P.C.  
Attorney for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
(248) 854-9650  
[jcanzano@michworklaw.com](mailto:jcanzano@michworklaw.com)

Thomas Quasarano (P27982)  
Brian Devlin (P34685)  
Assistant Attorneys General  
Attorney for Defendants  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162  
[quasaranot@michigan.gov](mailto:quasaranot@michigan.gov)  
[devlinb@michigan.gov](mailto:devlinb@michigan.gov)

## ORDER DENYING DEFENDANTS' REQUEST FOR STAY

At a session of the Circuit Court  
On 18 July 13 before  
HON. ROSEMARIE E. AQUILINA

Defendants having requested a Stay of Plaintiffs' request for Preliminary  
Injunction and at the Show Cause Hearing having been held on July 18, 2013;



IT IS HEREBY ORDERED, for the reasons stated on the record, that

~~Defendants' Request for a Stay of this pending appeal is denied.~~  
~~MOTION FOR PRELIMINARY INJUNCTION AND OTHER RELIEF DESCRIBED~~  
~~IN THE ORDER IS DENIED,~~  
*ORDER TO ENFORCEMENT OF ORDER GRANTING PLAINTIFFS*

IT IS SO ORDERED

*Rosemarie Esquilina*  
HON. ROSEMARIE E. AQUILINA  
COURT OF CLAIMS JUDGE  
P37670